

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT 515-14-9333-D4
Issued to: Robert Beaumont ARNOLD

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2362

Robert Beaumont ARNOLD

This appeal has been taken in accordance with 41 United States Code 239(g) and 46 CFR 5.30-1.

By order dated 17 December 1982, an Administrative Law Judge of the United States Coast Guard Seattle, Washington, suspended Appellant's seaman's document for ten months upon finding him guilty of misconduct. The specification found proved alleges that while serving as able-bodied seaman on board the SS PRINCE WILLIAM SOUND under authority of the document above captioned, on or about 12 December 1981 through 19 December 1981, Appellant wrongfully saved in the capacity noted his document was in the possession of the Coast Guard in Compliance with a Coast Guard Administrative Law Judge's order.

The hearing was held in Seattle, Washington on 9 September, 20 October, and 17 December 1982.

At the hearing Appellant was represented by professional counsel. Prior to arraignment, Appellant moved for dismissal. The motion was denied. After denial of the motion to dismiss and upon being arraigned, Appellant entered a plea of guilty to the charge an specification.

The Investigating Officer introduced in evidence sixteen documents.

The Appellant offered no defense.

At the end of the hearing, the Administrative Law Judge rendered and oral decision in which he concluded that the charge and single specification had been proved by plea. He then served a written order on Appellant suspending all documents issues to Appellant for a period of ten months.

The entire decision was served on 12 January 1983. Appeal was timely filed on 22 December 1982, and perfected on 23 March 1983.

FINDINGS OF FACT

On 9 September 1981, after a hearing held at Long Beach, California, an Administrative Law Judge of the United States Coast Guard entered an order revoking Appellant's merchant mariner's document. At that time, Appellant surrendered the document to the United States Guard in accordance with the Administrative Law Judge's order. On 2 October 1981, the Appellant appealed from the order of revocation. On 22 July 1982 Appeal Decision 2280 modified the order of revocation to provide for 10 months suspension.

Prior to surrendering his merchant mariner's document, Appellant had had a photocopy of it and had the copy laminated in plastic so that it looked very much like an original mariner's document. Appellant used the copy of his document to obtain employment in the capacity of able-bodied seaman aboard the SS PRINCE WILLIAM SOUND, from 12 December 1981 when he accepted employment and boarded the vessel at Martinez, California, until 19 December 1981, when he left the vessel at Valdez, Alaska. During the period in question, Appellant's merchant mariner's document was in the possession of the Coast Guard.

Upon the arrival of the SS PRINCE WILLIAM SOUND in Valdez, Alaska, the Coast Guard discovered that Appellant did not, in fact, possess a valid merchant mariner's document.

Appellant's prior record is as follow:

(1) S.S. THOMPSON LYKES: Misconduct (assault and battery); six months outright suspension plus four months suspension on twelve months probation, at New Orleans, LA, June 1953.

(2) S.S. COPPER STATE: Misconduct (failure to perform; assault and battery); three months outright suspension plus three months suspension on twelve months probation; at New Orleans, LA, February 1961. COMMANDANT DECISION ON APPEAL #1298, AFFIRMED 2 March 1962.

(3) S.S. SOONER STAT: Misconduct (failure to join, at Kobe, Japan); Admonition, at San Francisco, Ca, December 1962.

(4) S.S. SANTA RITA: Misconduct (foul and abusive language directed to vessel's officers; failure to perform due to intoxication); four months suspension on twelve months probation New York, NY July 1962.

(5) S.S. EVERGREEN STATE: Misconduct (failure to perform, failure to join); two months outright suspension plus four months suspension on twelve months probation,

at Seattle, WA, April 1966.

(6) S.S. AMERICAN REPUBLIC: Misconduct (creation a disturbance; absent without leave; failure to perform due to intoxication, failure to join); twelve ninths outright suspension plus six months suspension on eighteen months probation; at Charleston, SC, December 1966. COMMANDANT DECISION ON APPEAL #1727, AFFIRMED 16 October 1968.

(7) S.S. MARYLAND TRADER: Misconduct (failure to join); three months outright suspension plus six months suspension on twelve months probation; at Boston, MA, March 1970. COMMANDANT DECISION ON APPEAL #1837, AFFIRMED 16 APRIL 19719

(8) S.S. AUSTRAL LIGHTNING: Misconduct (failure to perform, four specifications, failure to join, two specifications, incompetence, three specifications); Revocation at Los Angeles, CA, September 1981. COMMANDANT DECISION ON APPEAL #2080, 22 July 1982. AFFIRMED Misconduct, DISMISSED Incompetence, MODIFIED sanction to ten months outright suspension.

BASES OF APPEAL

This apeak has been taken from the order imposed by the Administrative Law Judge. Appellant asserts that the Administrative Law Judge erred:

- (1) when he denied a defense motion to dismiss the charge and specification;
- (2) when he admitted three separate pieces of evidence over Appellant's objection that they constituted hearsay evidence; and
- (3) when he departed from the Scale of Average Orders in imposing a sanction in this case.

APPEARANCES: Davies, Roberts, Reed, Anderson, and Wacker, by Denny Anderson.

OPINION

I

Appellant first asserts that the Administrative Law Judge erred when he denied his motion to dismiss. I do not agree.

In his motion Appellant argued that had he know that the Coast Guard intended to prefer charges for this particular incident, he would have appealed from Appeal Decision 2280, which had resulted in suspension of his document. Appellant contends that he would have prevailed before the NTSB, and would have had a valid merchant mariner's document at the time of the incident in question.

The fact is that Appellant did not appeal to NTSB. What might have happened had he done so is entirely speculative. I, therefore, find no error in the Administrative Law Judge's denial of the motion to dismiss.

II

Appellant next contends that the Administrative Law Judge erred when he admitted three separate pieces of evidence contrary to the "hearsay rule."

The three documents in question were a signed statement by the Investigating Officer; a letter from Trinidad Corporation, operator of the S.S. PRINCE WILLIAM SOUND, to the National Maritime Union; and a letter from the National Maritime Union back to Trinidad Corp. The Investigating Officer's statement recited that he had contacted Coast guard Headquarters by telephone and been informed that Appellant had not been issued a temporary document pending appeal of the 9 September 1981 order. The letter from Trinidad Corp. asks how Appellant was supplied to the vessel with an invalid document. The letter from the Union responds that the forgery was undetected because of its high quality. The from the National Maritime Union also contains the statement:

I understand he bragged to several members after the incident on the S.S. PRINCE WILLIAM SOUND about the perfect copy of seaman's papers in his possession, and defied anyone to detect the difference.

Except for this statement, the three documents contain no information regarding Appellant's actions other than that in the specification to which he pleaded guilty.

A plea of guilty is sufficient in and of itself to support the finding of proved. It constitutes a waiver of all non-jurisdictional defenses. Appeal Decision 1203 (DODD). I have held that an appeal may not contravene a guilty plea. Appeal Decision 1631 (WOLLITZ). A plea of guilty obviates the requirement for otherwise establishing a prima facie case. Appeal Decision 1712 (KELLY). Therefore, any error in admitting these documents does not affect the finding that the charge and specification are proved.

Such evidence, of course, should not be used to establish material facts in issue. The person charged has the right to cross-examine witnesses testifying against him. 46 CFR 5920-45(a)(3). Although "strict adherence to the rules of evidence observed in courts is not required....hearsay evidence shall be rejected if the declarant is readily available to appear as a witness." 46 CFR 5.20-95(a). Here, however, except for the statement set forth above, the documents in question merely tended to show a basis for the charge and the guilty plea. To this extent, I find no error or prejudice to Appellant. The statement set out above is arguably relevant to a matter in issue, the sanction. In the Decision and Order, the Administrative Law Judge discussed in detail the matters which he considered in determining the sanction. He did not mention the information in the statement. I conclude, therefore, that it was not used in determining the sanction and that its admission has not resulted in error to Appellant's prejudice or provided any cause to modify the order.

III

Finally, Appellant contends that the order of the Administrative Law Judge fails to comport with the Scale of Average Orders and should be reduced. I find this argument to be without merit.

The fraudulent use of a false seaman's document would ordinarily warrant a sanction of revocation. Appeal Decisions 2346 (WILLIAMS) and 2205 (ROBLES). Further, the sanction imposed at the conclusion of a case is exclusively within the authority and discretion of the Administrative Law Judge. He is not bound by the Scale of Average Orders. 46 CFR 5.20-165(a) and Appeal Decision 2173 (PIERCE). In light of Appellant's extensive record of prior offenses and the seriousness of this offense, the sanction is not excessive.

The finding that the charge and specification against Appellant are proved is supported by his plea. The hearing was conducted in accordance with the requirements of applicable regulations. The order is appropriate.

ORDER

The order of the Administrative Law Judge, dated at Seattle, Washington on 17 December 1982, is AFFIRMED.

B.L. STABILE
Vice Admiral, U.S. Coast Guard
VICE COMMANDANT

Signed at Washington, D.C., this 12th day of June 1984.